

UNITED STATES DISTRICT COURT

for the

Southern District of New York

DOCUMENT

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DOC #:

DATE FILED:

5/28/2024

United States of America

v.

David Perez

Case No: 18-CR-802-03 (CM)

USM No: 91380-054

Date of Original Judgment: 05/16/2023

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Deborah Colson

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.

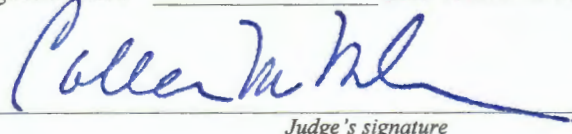
The Probation Department has determined that Perez is ineligible for either of the Amendment 821 reductions. The Court agrees. Although Perez had zero criminal history points prior to his conviction in this case, he is nonetheless ineligible for a reduction under Part B because he does not meet the other "specified criteria." Perez's Guidelines calculation included an adjustment under U.S.S.G. §3B1.1(a) (Aggravating Role). One of the criteria that a defendant must meet to be eligible for a Part B reduction is that his Guidelines range calculation not have included an adjustment under §3B1.1. Moreover, even if Perez had not received the Aggravating Role Enhancement, he would not be able to take advantage of the reduction afforded by Amendment 821 (Part B) because what would be his amended Guidelines (151-188 months') is still greater than the 84 months' sentence the Court originally imposed. Under U.S.S.G. § 1B1.10(b)(2)(A), the court is not permitted to reduce a defendant's term of imprisonment "to a term that is less than the minimum of the amended guideline range."

(See Page 2 for additional parts. Complete Parts I and II of Page 2 when motion is granted)

Except as otherwise provided, all provisions of the judgment dated _____ shall remain in effect.

IT IS SO ORDERED.

Order Date: 05/28/2024



Judge's signature

Effective Date: _____
(if different from order date)

Colleen McMahon, U.S.D.J.

Printed name and title